

## LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

### for September 17, 2003 PLANNING COMMISSION MEETING

**P.A.S.:** Special Permit #643E

**PROPOSAL:** To reduce the rear yard setback for an unenclosed deck to 13' on Lot 22, block 5, Briarhurst West 4<sup>th</sup> Addition.

**LOCATION:** 5433 S. 31<sup>st</sup> Street Court.

**WAIVER REQUEST:**

1. Reduce the rear yard setback for an unenclosed deck to 13'.

**LAND AREA:** Approximately 10,578 square feet, more or less.

**CONCLUSION:** The reduction in the setback is acceptable.

**RECOMMENDATION:**

**Conditional Approval**

Reduce the rear yard setback for unenclosed decks to 13' on Lot 22, block 5, Briarhurst West 4<sup>th</sup> Addition Approval

**GENERAL INFORMATION:**

**LEGAL DESCRIPTION:** Lot 22, block 5, Briarhurst West 4<sup>th</sup> Addition

**EXISTING ZONING:** R-1, Residential

**EXISTING LAND USE:** Single Family Residential

**SURROUNDING LAND USE AND ZONING:**

North:	Residential	R-1, Residential
South:	Residential	R-1, Residential
East:	Residential	R-1, Residential
West:	Residential	R-1, Residential

**ASSOCIATED APPLICATIONS:** Board of Zoning Appeals #2363.

**HISTORY:**

Special Permit #1022C, Old Cheney Place 1<sup>st</sup> Addition allowed open decks in the rear yard to be constructed at a height more than three feet above the ground was approved by the City Council on July 5, 1998.

Special Permit #1022B, Old Cheney Place 1<sup>st</sup> Addition CUP added dwelling units, allowing a total of 180 units (84 two family and 96 multifamily) and to split off from the Briarhurst Commons CUP was approved by the City Council in 1987.

Special Permit #643D added 222 dwelling units to the Briarhurst West CUP and was approved on October 19, 1981.

Changed from A-1 and A-2, Single Family to R-1 and R-3, Residential during the 1979 zoning update.

Special Permit #643C for Briarhurst West 5<sup>th</sup> Addition CUP to add multifamily buildings was approved August 8, 1977.

Special Permit #643B for Briarhurst West 4<sup>th</sup> Addition CUP multifamily area was approved February 14, 1977.

Special Permit #643A amending Briarhurst West CUP was approved in 1974.

Special Permit #643 amending Briarhurst West CUP was approved in 1973.

Special Permit #616 for Briarhurst West CUP for 916 dwelling units was approved in 1972.

### **COMPREHENSIVE PLAN SPECIFICATIONS:**

This area is shown as Urban Residential in the Comprehensive Plan (F-25).

**The appropriate Guiding Principles for existing neighborhoods indicates:** (F-69)

- "Require new development to be compatible with character of neighborhood and adjacent uses (i.e., parking at rear, similar setback, height and land use)."

**TRAFFIC ANALYSIS:** S. 31<sup>st</sup> Street Court is classified as a local road.

### **ANALYSIS:**

1. This is a request to allow an uncovered deck to extend into the rear yard setback. The applicant indicated that they would like to build a deck 6' above grade, which is not allowed to extend into the rear yard setback. The applicant feels their lots is unusual because it is on the curve of a cul-de-sac.
2. The applicant requested a variance through the Board of Zoning Appeals, however, the assistant city attorney indicated that the applicant must first request an amendment to the special permit since the special permit may modify setbacks.

3. Because the lot is on a curve of the cul-de-sac, the lot does have a shorter depth on one side, which is unusual, but not inconsistent with other cul-de-sac lots in the neighborhood. It is, however, unusual when compared to lots platted in newer neighborhoods. There is a subdivision requirement that all lot lines be right angles to the centerline of the street or radius.
4. Deck height is restricted to three feet above grade because a structure higher than three feet becomes obtrusive to neighboring properties and a privacy issue, regardless of the opinion of the current neighbors. The reduction of the rear yard still leaves 13' of space in the rear yard to maintain privacy issues. Given the calculation of the rear yard setback and the unusual nature of this lot layout, this seems appropriate.
5. The applicant requested the modification only to his lot, however, the Planning Department staff is not opposed to allowing the modification for the entire community unit plan. Granting the modification to the entire community unit plan at this time will avoid further requests. There has not been correspondence from the neighborhood association indicating they would like to pursue this modification to the entire community unit plan, and the Planning Department decided not to make this a condition. If the neighborhood shows interest in this possibility the Planning Department would gladly meet with them.
6. The Public Works & Utilities, Fire, Building and Safety Fire Prevention, Police, Parks, and Lincoln-Lancaster County Health Departments do not object to the request.

**CONDITIONS:**

Site Specific:

1. This approval permits a reduction of the rear yard setback for an unenclosed deck to 13' on Lot 22, Block 5, Briarhurst West 4<sup>th</sup> Addition.

General:

3. Before receiving building permits:
  - 3.1 The construction plans shall comply with the approved plans.

**STANDARD CONDITIONS:**

4. The following conditions are applicable to all requests:
  - 4.1 Before occupying the new deck all development and construction shall have been completed in compliance with the approved plans.

- 4.2 All privately-owned improvements shall be permanently maintained by the owner or an appropriately established homeowners association approved by the City Attorney.
  - 4.3 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
  - 4.4 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
  - 4.5 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.
5. The site plan as approved with this resolution voids and supersedes all previously approved site plans, however all resolutions approving previous permits remain in force unless specifically amended by this resolution.

Prepared by:

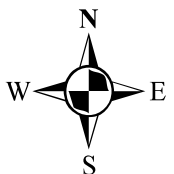
Becky Horner  
Planner

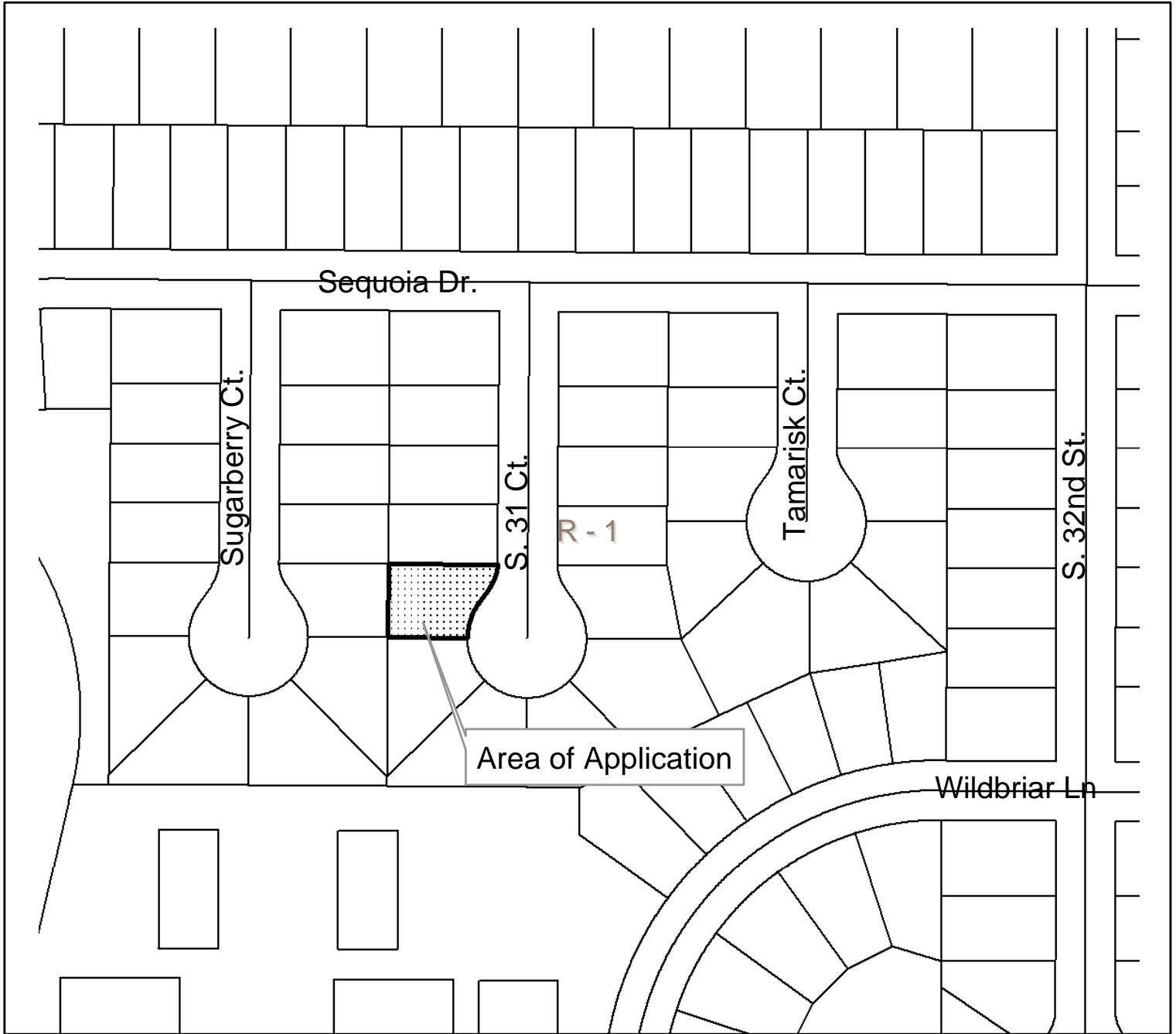
**DATE:** September 4, 2003

**APPLICANT,  
OWNER &  
CONTACT:** Pat McGrane  
5433 S. 31<sup>st</sup> Street Court  
Lincoln, NE  
(402)416-1961



**Special Permit #643E CUP**  
**S. 27th & Old Cheney Rd.**



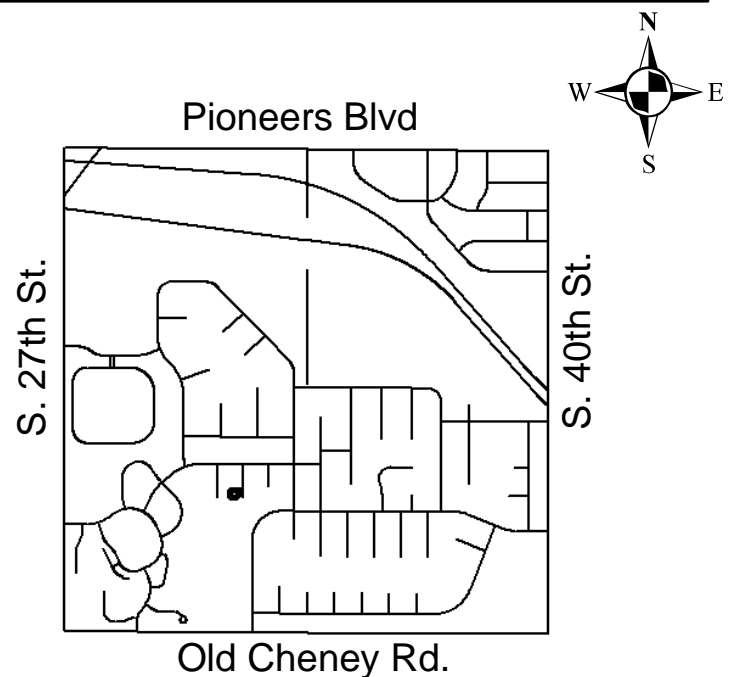
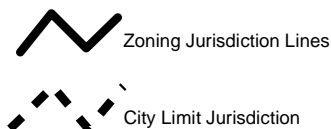


## Special Permit #643E CUP S. 27th & Old Cheney Rd.

### Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile  
Sec. 7 T09N R7E



To: Marvin Krout, Planning Director  
City Planning Department  
555 S. 10th (Suite 212)  
Lincoln, NE

Aug. 21, 2003

This letter is my request to amend the community unit plan for Briarhurst West to waive the rear yard set back for deck height to be higher than three feet. I understand this request will go to the Planning Commission, and if approved, to the City Council.

I understand from the Planning Department staff there is a similar waiver already approved for the "Old Cheney Place" neighborhood immediately adjacent on the west edge of the Briarhurst Addition. I am seeking this same variance.

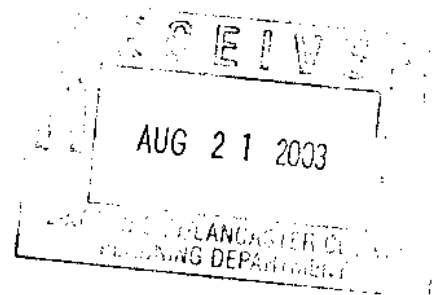
I understand that present plotting of neighborhood lots on cul-de-sac's are required to be of equal length on each side of the house. Had this design requirement been in effect in 1986 when my house was built I would not have the backyard handicap I'm facing today. This action would not have been necessary. Hopefully, this process can rectify the situation and bring this situation up to today's standard with the variance.

Documents of home ownership, support from my neighbors, construction drawings, and my reasons for this variance are provided.

Please let me know if there is other information needed.

*Pat McGrane*

Patrick B. McGrane, homeowner  
5433 S. 31st Street Court



August 20, 2003

TO: Lincoln Planning Commission

I am requesting a variance to the Lincoln building policy on how high I can build a deck in regards to the backyard property line due to the handicap of the location of my house on the property.

I live at 5433 S. 31st Street Court. I am on the circle portion of a cul-de-sac. As I learned from the city building permit staff, houses are set back a certain distance from the curb. Since my property line is on the curve of the curb, that setback is measured from the nearest point from the house to the curb.

This has left me with a really small backyard, which at the time of purchase I thought was OK but now I've learned handicaps my use of the yard. Neither the selling realtor nor my purchasing realtor pointed out the property line issue.

There are several handicap complications adding to the issue. Those are:

- 1) At present, there is only 25 feet from the back of the house to the back property line. When I purchased the house three years ago there was and still is a 10 ft. by 10 ft. deck on the back of the house. Apparently this deck already encroaches on the height issue. Again, neither realtor pointed out this defect (exceeding city building codes) to me.
- 2) The irregular shape of the lot is a contributing factor. (I always wondered why my house set so far back from others along the street!) One side of my lot is 110 feet deep. The "short" side is only 80 feet deep. This short side is apparently what caused the house to be set so far back on the lot.
- 3) The land, from the front yard to the back yard drops an estimated 12 feet in elevation. This has resulted in an a daylight basement (windows only, no walkout). Therefore the deck extends out from the patio door on the main level and the floor of the deck is six feet off the ground. The house directly behind me sits at this lower level so their patio door is at ground level. Most of the use of my backyard comes from being on the deck.
- 4) I mentioned the present deck is 10x10 foot even though it is apparently "illegal". I believe it to be the original deck when the house was built in 1986. Even with its extra size, there has never been a problem with any of the neighbors, so it is not intrusive in any way.
- 5) I plan to put a hot tub on this new 12 foot deck. The extra two feet would allow a safer condition for people to walk around the hot tub down the stair that exit to the side. I'm a big guy at 6' 3" and weigh more than I should! But because of my height, the size of the hot tub is eight foot square. I should mention that I have already ordered the hot tub (with deposit) because I was unaware of this building restriction. Not one of the three contractors who gave me a bid for deck construction mentioned this height (can't be over 36" high if in the 20' setback) restriction. As a



consumer, I expected these folks to know the rules. Only in later discussions with your staff about the deck construction itself to hold the weight of the hot tub, did the backyard property line issue arise. There would still be 13 feet from the edge of the deck to the property line. My backyard neighbor already has 20-foot cedar trees along the fence line for further privacy.

6) The low backyard landscape, and no basement entry, would further handicap the use of my yard if the deck is built at a lower level. Hot tubs are gravity drained and need to be drained about 3-4 times per year. If built at a lower level, my only choice would be to drain the 450 gallons downward into my back yard. If the new deck is built at the same level as the present deck my plan is to drain the water down the kitchen sink.

Putting the hot tub off the deck, at yard level, would take up additional limited yard space and interfere with optimum use of the hot tub, which is primarily in cooler months. I find it interesting that if I built a deck 36-inches off the ground I could extend it to within two feet of the property line. Why should the deck height difference matter? I also have a six foot privacy fence around my property.

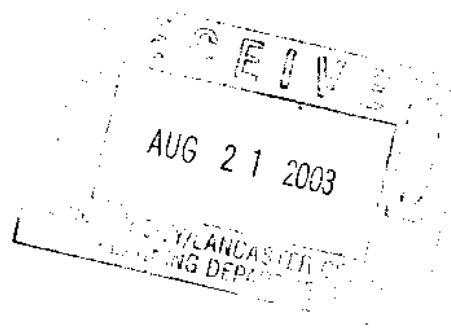
I have included letters of support from my neighbors, to permit the deck to extend out from the house 12 feet at the same level as the deck is now, for your review. They do not oppose your granting this variance.

Please permit me to have a height variance of a 12-foot wide deck that will enhance the house and neighborhood.

*Pat McGrane*

Patrick B. McGrane, homeowner  
5433 S. 31st Street Court  
Lincoln, NE

P.S. I understand the same variance has already been grant to the Old Cheney Place neighborhood which is next to my neighborhood on the west. That establishes this variance as a valid option. I am requesting the same variance be granted to me.



July 16, 2003

To Whom It may Concern on  
The City Building Permit Appeals Committee

I understand that my neighbor next to me on the south, Pat McGrane, of 5433 S. 31<sup>st</sup> Court, is appealing to you for an exception to build a 12 foot deep (out from the house) deck in his back yard. I understand that encroaches on the property line rules.

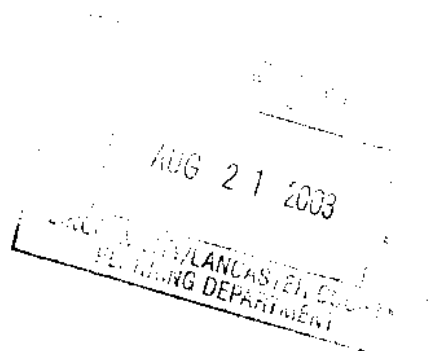
As his next door neighbor, I hope you approve his request. I have no objection to a deck of that size being built. There is a 10-foot deck on his house at present that was built years ago, before Pat lived in the house. There has never been a problem because of its size. Replacing the old deck and building a new one out two feet further will not hurt anything. In fact, a new deck will enhance the appearance of the backyard scenery.

I see Pat on his deck quite frequently. He uses it a lot and seems to really enjoy barbecuing. If this will allow him to enjoy his backyard even more, then he should be allowed to extend the deck. Yes, I understand he wants to put a hot tub on the new deck. That is also fine with me.

Please grant him this exception. Thank you for this chance to be heard.

*Mrs Helen Seuss*

Mrs. Helen Seuss  
5425 S. 31<sup>st</sup> Court



July 16, 2003

To Building Permit Appeals Review Committee

I understand my next door neighbor to the north, Pat McGrane of 5433 S. 31<sup>st</sup> Court, is appealing to you for an exception to build a 12-foot deck (extending out from the back of the house) into his back yard. I also understand this encroaches on the city rules on how close a person can build to the backyard property line.

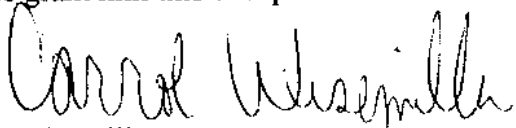
The present deck on the house extends out 10 feet and has been there for a number of years, long before Pat moved in almost three years ago. I've noticed that Pat uses his deck nearly year round, barbecuing or just visiting with friends.

I am in favor of allowing him to replace his old deck with a new one that extends outward from the house 12 feet. This minor extension from what presently exists will have no impact on me. In fact, Pat has just removed some rather ugly hedge that grew along this same edge of the deck, that the previous homeowner had let grow as tall (over 8 feet) as the deck. This new deck will not extend out further than the present deck and ugly hedgerow did.

The new deck should improve the property and enhance the neighborhood as well. I do understand part of the reason for this extension is to put a hot tub on the new deck. I have no problems with this change either.

Because of being on the curved part of a cul-de-sac, Pat has a really small backyard. This exception will allow him efficient use of the space.

Please grant him this exception to build a new 12 foot deep deck.



Carol Wisemiller  
5441 S. 31<sup>st</sup> Court

AUG 21 2003

BUILDING DEPARTMENT

July 17, 2003

TO Lincoln Building Permit Division  
ATTN: Citizen committee for policy exemptions

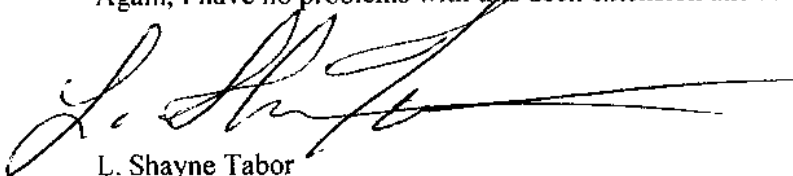
I understand my neighbor directly behind my house, Pat McGrane of 5433 S. 31<sup>st</sup> Court, is applying to you for an exemption to build a deck on his house closer to the back property line than city policy allows.

He wants to build a deck that will extend 12 feet out from his house. I have no problem with this deck extension, which is just two feet more than the present deck. I encourage you to approve his request.

I realize this will encroach on the "20-foot" building limit from the back property line, however this will not interfere with me. Pat and I both have shallow back yards since we are on cul-de-sacs. My patio door exits at ground level from the main floor. Pat's home however is built into the "hillside" so his patio door is six feet above the backyard. He uses his deck a lot and in the three years he has lived there we have had no problems.

As a realtor, I understand the reasons for these policies. However this is one case where an exemption should be granted.

Again, I have no problems with this deck extension and recommend you approve his request.



L. Shayne Tabor  
5432 Sugarberry Court

AUG 21 2003

CITY OF LANCASTER  
PLANNING DEPARTMENT



Briarhurst West Neighborhood Association

P.O. Box 6761  
Lincoln, NE 68506

August 20, 2003

To: City Board of Zoning Appeals  
Re: Appeal No. 2363 by Patrick McGrane, 5433 S. 31 St. Court

Mr. Patrick McGrane, 5433 S. 31 St. Court, contacted me concerning his deck project. He indicated that he is seeking approval to replace his existing 10' X 10' deck with a 12' X 17' deck. He submitted drawings and explanations of his project.

After reviewing the Briarhurst West Neighborhood Association Declaration of Covenants, Conditions, and Restrictions, I find no restrictions that would prevent Mr. McGrane from building said deck.

Sincerely,

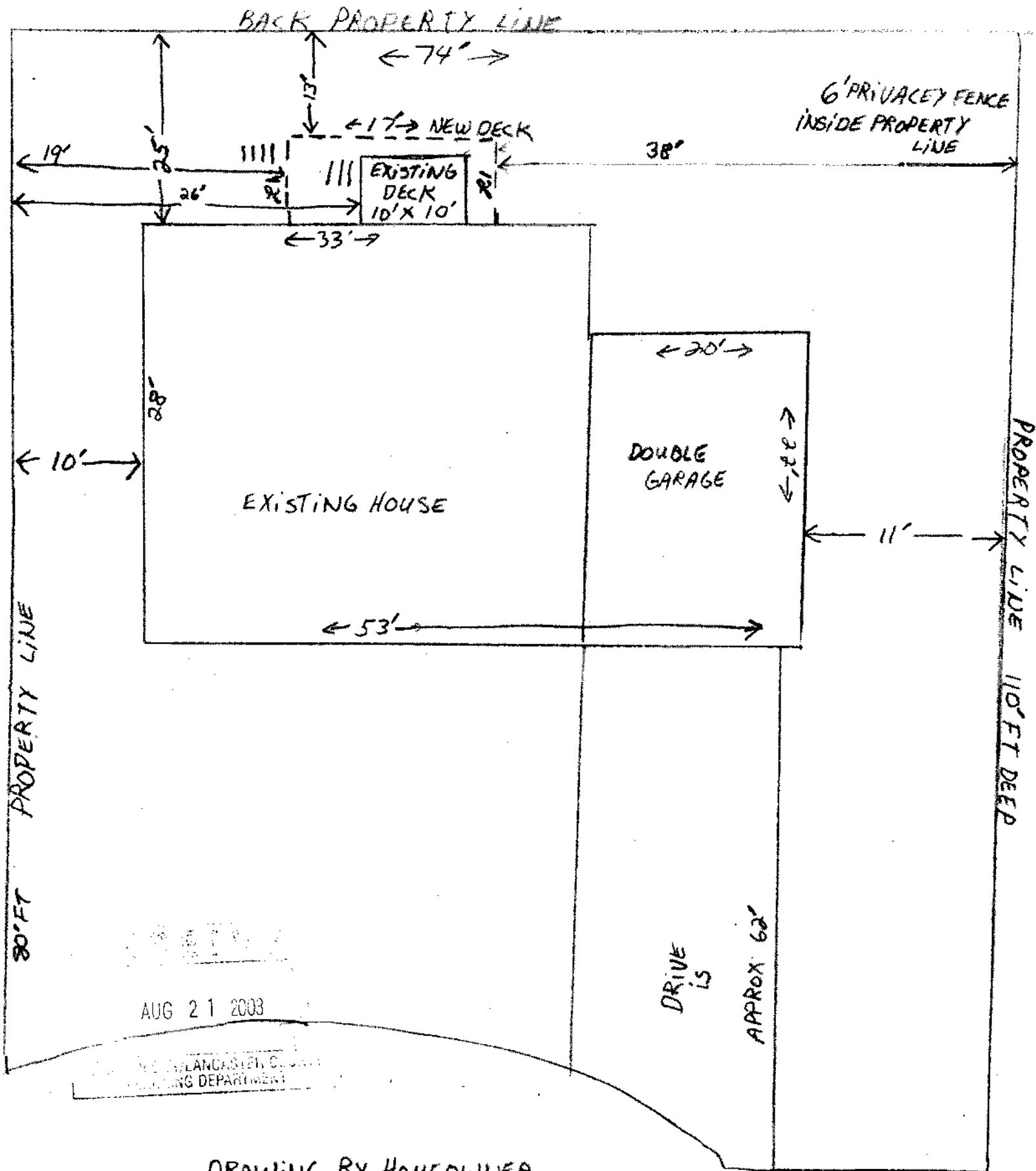
A handwritten signature in cursive script that reads "Gregg Aksamit".

Gregg Aksamit  
Treasurer

RECEIVED  
AUG 21 2003  
LINCOLN, NE  
PLANNING DEPARTMENT



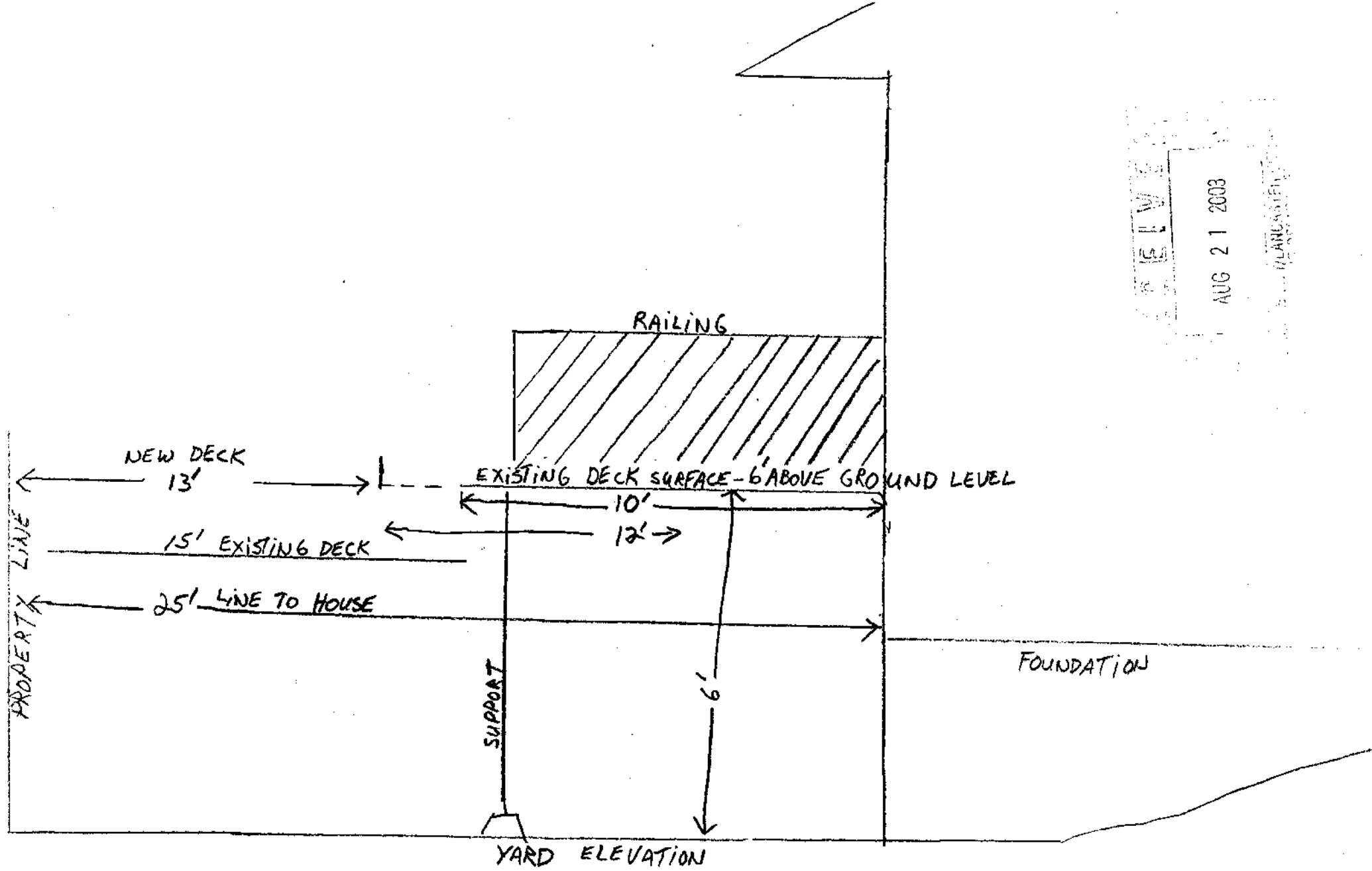
AUG 21 2003



DRAWING BY HOMEOWNER

5433 S. 31st COURT

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RECEIVED  
AUG 21 2003  
PLANNING DEPT.

DRAWING BY HOMEOWNER  
6' PRIVACY FENCE AROUND BACKYARD

5433 S. 31st COURT